IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1528 of 1997
in
SPECIAL CIVIL APPLICATION No 6026 of 1996

and

LETTERS PATENT APPEAL No 1529 of 1997
in
SPECIAL CIVIL APPLICATION No 7905 of 1996

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT COOPERATIVE BANK LTD. & ANOTHER

Versus

K.L. BARIA & OTHERS

Appearance:

1. LETTERS PATENT APPEAL No. 1528 of 1997

MR KM PATEL for the Appellants

Respondents Nos. 1-2 SERVED

MR MS MANSURI for Respondents Nos. 3-4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 12/01/2005

COMMON ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

These two appeals preferred under clause 15 of the Letters Patent challenge the common judgment and order dated 20th November, 1997 passed by the learned Single Judge in Special Civil Applications Nos.6026/1996 and 7905/1996. The said writ petitions challenge the interim orders for payment of subsistence allowance to the respondents - workmen pending proceedings before the Labour Court in Termination Applications Nos.4/1996 and 14/1995. The appellant before this Court is Bharat Cooperative Bank Limited (hereinafter referred to as "the Bank") and the respondents are the workmen employed by the Bank.

In an incident of misappropriation of the funds of the third party the service of a Peon and a Clerk in the Bank, the applicants in Termination Application No.4/1996, came to be terminated for loss of confidence without formal enquiry. In another incident of passing the cheques in excess of the overdraft limit of the customers the service of the Senior Clerk-cum-Accounts Officer-cum-Passing Officer came to be terminated for loss of confidence without formal enquiry. The said order of termination came to be challenged by the concerned workman in Termination Application No.14/1995.

Pending the aforesaid Termination Application No.4/1996 the workmen claimed payment of subsistence allowance till the allegation made against them was proved by leading evidence before the Court. The said claim came to be allowed by the learned Labour Judge by his order dated 10th June, 1996. The said order was confirmed in Revision by the Industrial Court by its order dated 6th August, 1996. Feeling aggrieved, the Bank preferred the above Special Civil Application No.6026/1996.

A similar claim made by the workman in Termination Application No.14/1995 was rejected by the Labour Court but was accepted in Revision by order dated 7th August, 1996 made by the Industrial Court. Feeling aggrieved, the Bank preferred the above Special Civil Application No.7905/1996.

Both the writ petitions involved identical issue whether the delinquent workmen were entitled to receive subsistence allowance pending proceedings before the Labour Court till the imputation of charge made against them was proved by leading evidence before the Labour Court. The learned Single Judge was of the opinion that, had the Bank held disciplinary proceeding the Bank would have been obliged to pay atleast the subsistence allowance pending disciplinary proceeding. In the opinion of the learned Single Judge the delinquent workmen would, therefore, be entitled to subsistence allowance in accordance with the Standing Orders till the imputation of charge made against them was proved by leading evidence before the Labour Court. Therefore, the present Appeals.

Learned advocate Mr.Patel has appeared for the Bank and has submitted that the learned Single Judge has manifestly erred in holding that delinquent workmen were entitled to receive subsistence allowance pending proceedings before the Court until the Bank proved the misconduct by leading evidence before the Court. He has also submitted that the learned Single Judge has erred in holding that opportunity to lead evidence before the Court to prove the act of misconduct is a concession given to the employer and is not a right conferred upon the employer. In the submission of Mr.Patel, both these propositions made by the learned Single Judge are contrary to the law established by the Hon'ble Supreme Court. Consequently, the orders for payment of subsistence allowance made in favour of the workmen are erroneous and require to be quashed and set aside. In support of his contentions, Mr.Patel has relied upon the judgments of the Hon'ble Supreme Court in the matters of Engineering Laghu Udyog Employees' Union v/s. Judge, Labour Court and Industrial Tribunal [2004-I-LLJ 1105]; of R.Thiruvirkolam v/s. Presiding Officer and another [(1997)1 SCC 9]; of Punjab Dairy Development Corporation and another v/s. Kala Singh and others [(1997)6 SCC 159]; of State of Punjab and others v/s. Gurdev Singh and Ashok Kumar [AIR 1992 SC 111]; of (M/s.) Anup Engineering Ltd. v/s. Shreenarayan Kanaiyalal [1995(1) GLH 345]; of The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v/s. The Management and others [AIR 1973 SC 1227]; of The Cooper Engineering Ltd. v/s. P.P.Mundhe [AIR 1975 SC 1900]; and of Ram Lakhan v/s. Presiding Officer and others [AIR 2001 SC 286].

Mr.Patel has submitted that once the order of termination of service is made against the delinquent

servant, master and servant relationship stands severed. In the proceedings challenging such order of termination the Court may, on the facts of the case, direct stay of the operation of the order of termination of service but there cannot be a universal proposition that in all such cases pending proceedings before the Court such delinquent servant is entitled to receive subsistence allowance. He has submitted that heavy reliance has been placed on the case of Fakirbhai Fulabhai Solanki v/s. Presiding Officer and another [AIR 1986 SC 1168]. However, the said case arose from the claim for payment of subsistence allowance pending permission proceedings under Section 33(3) of the Industrial Disputes Act, 1947. He has submitted that in such cases master and servant relationship would continue till the Court grants permission as envisaged by the said Section 33(3) and until such permission is granted the delinquent servant would be entitled to receive subsistence allowance. However, the said principle cannot be extended to the cases like the present one where the orders of termination had been made and had become operative.

In the matter of Engineering Laghu Udyog Employees' Union (supra), similar were the facts. For the alleged misconduct the service of the delinquent servant was terminated. In the ensuing industrial dispute the order of termination of service was challenged being contrary to the principles of natural justice, as no domestic enquiry was held for the said purpose. In the circumstances, the employer opted to lead evidence to prove imputation of charge. The Labour Court found that the charges levelled against the delinquent servant were not proved. The challenge to the said order before the learned Single Judge and the Division Bench of the High Court also failed. Before the Supreme Court, it was argued that the view taken by the High Court to the extent it held that the order of termination would relate back to the original date of termination was erroneous. The Supreme Court negatived the contention and held that, "...Thus, only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the same can be set aside. So long as the same is not set aside, it remains valid. But once whether on the basis of the evidences brought on record in the domestic inquiry or by reason of additional evidence, the employer makes out a case justifying the order of dismissal, we fail to understand as to how such order of dismissal can be given effect to only from the date of the award and not from the date of passing of the order of punishment. The distinction sought to be made

by this Court in some of the matters including Gujarat Steel Tubes Ltd.'s case (supra), in our opinion, is not based on a sound premise, particularly when the binding decisions of this Court in Workmen of Motipur Sugar Factory AIR 1965 SC 1803: 1965-II-LLJ-162 and Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management AIR 1973 SC 1227: 1973(1) SCC 183: 1973-I-LLJ-278, have not been taken note of." The Court was further pleased to issue caution that, "...although in certain contingencies an employer may in a case of grave nature of misconduct dismiss a workman without holding an enquiry but ordinarily such an enquiry will not be dispensed with. In the event it is found ultimately by the Labour Court/Industrial Tribunal that the employer had taken recourse to unfair labour practice or the order of termination has been passed mala fide or by way of victimisation, it will be open to the Tribunal to pay compensation even in a case where ultimately charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not been (sic) complied with."

In the matter of R.Thiruvirkolam (supra) also, the Hon'ble Supreme Court disapproved its earlier judgment in the matter of Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [AIR 1980 SC 1896]. The Supreme Court approved the view that, "the award of the Labour Court would relate back to the original date of order of dismissal was passed". Similar is the view expressed in the matter of Punjab Dairy Development Corporation Limited (supra).

In the matter of State of Punjab and others (supra), the three judges Bench of the Supreme Court considered the applicability of the law of limitation to a void order. It has been held that, "...It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

In the present cases, indisputably the service of the delinquent workmen came to be terminated on the ground of loss of confidence without holding formal disciplinary proceeding. The applicants in Termination Application No.4/1996 challenged the said orders of termination of service in Special Civil Application

No.1357/1996. The said writ petition came to be disposed off by the learned Single Judge by order dated 17th April, 1996. Though the learned Judge disposed off the writ petition on the ground of alternative remedy available to the workmen, the learned Judge expressed the opinion that till such time the employer leads evidence and proves the alleged act of misconduct before the alternative forum, such workmen would be entitled to receive subsistence allowance as a delinquent servant would receive if suspended from service pending disciplinary proceeding. Pursuant to the said order the orders of termination of service were challenged before the Labour Court in the above referred Termination Application No.4/1996. Pending the said Termination Applications Nos.4/1996 and 14/1995 the workmen applied for payment of subsistence allowance. Obviously, guided by the observations made by the learned Single Judge in above referred Special Civil Application No.1357/1996 the Labour Court directed payment of such subsistence allowance to the applicants in Termination Application No.4/1996. The said relief was, however, refused to the applicant in Termination Application No.14/1995. Feeling aggrieved, the applicant in Termination Application No.14/1995 preferred Revision Application No.5/1996 before the Industrial Court, Vadodara, which was pleased to accept the said Revision Application by order dated 7th August, 1996 and to direct the appellant to pay subsistence allowance pending proceedings before the Labour Court.

We are informed that the Bank proved the imputation of charge made against the delinquent workmen by leading evidence before the Labour Court. In view of the nature of guilt proved against the workmen, the Labour Court has upheld the orders of termination of service of the delinquent workmen.

As held by the Hon'ble Supreme Court in the above referred cases the award of the Labour Court shall relate back to the date of termination of service and shall not take effect from the date of the award. As a necessary consequence it must be held that once the order of termination of service is made the jural relationship of master and servant stands severed. Until such order is set-aside the workman cannot have a claim arising from such master and servant relationship. If that be so, such servant shall have no right to claim subsistence allowance after his service is terminated. Even if such order is void for non-observance of principles of natural justice, as in the present cases, or for a defective enquiry such order shall have full force and

applicability until it is held to be bad and is set-aside by an authority or a court of competent jurisdiction. In our opinion, therefore, the learned Single Judge has erred in holding that in all such cases the delinquent servant would be entitled to receive subsistence allowance in accordance with the Standing Orders.

For the aforesaid reasons, we are of the view that the respondents-workmen were not entitled to receive subsistence allowance pending the proceedings before the Labour Court. The learned Single Judge has manifestly erred in holding that in such cases the right to subsistence allowance is a matter of course. We, therefore, allow the appeals. The impugned judgment and order dated 20th November, 1997 passed by the learned Single Judge in Special Civil Applications Nos.6026/1996 and 7905/1996 is quashed and set-aside. The Special Civil Applications are allowed. The impugned orders passed by the Industrial Court in Revision Applications Nos.3/1996 and 5/1996 are quashed and set-aside. The parties shall bear their own cost.

Registry shall maintain copy of this order in each appeal.

(Ms. R.M.Doshit, J.) (S.R.Brahmbhatt, J.)

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